PERIASAMY SANGILI

v.

DATUK S. SAMY VELLU

HIGH COURT MALAYA, KUALA LUMPUR
HARUN HASHIM J
[CIVIL SUIT NO. A20 OF 1982]
11 JUNE 1990

ADMINISTRATIVE LAW: *Striking out under O. 18 r. 19 Rules of the High Court 1980 - Declaratory judgment - Abuse of powers by Minister - Article 43 Clause 6 of Constitution - Locus standi - Legal right - Legal question - Discretionary remedy.*

The plaintiff alleges that the defendant, in his private capacity, sought to purchase a property from the plaintiff's late father. The defendant was at the material time the Federal Minister for Works and Utilities. The defendant had issued one receipt on the letterhead of the conference of Mentri Besars and Chief Minister and two receipts on the letterhead of his Ministry. The plaintiff seeks a declaration that the defendant had abused his official position by permitting the use of official stationery for private purposes, contrary to his ministerial oath of office and allegiance pursuant to Article 43 Clause 6 of the Constitution. The defendant applied under O. 18 r. 19 of the Rules of the High Court 1980 for the striking out of the proceeding instituted by the plaintiff.

Held:

[1] The plaintiff has no *locus standi* as the declaration does not involve any legal right of the plaintiff; he has no connection with the sale and purchase of the land and is a mere member of the public who does not have any genuine or substantial interest in having his legal position declared.

[2] The concept of public interest litigation does not apply in his country - see *Tan Sri Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177.

[3] Assuming that the plaintiff did have *locus standi*, the abuse of powers alleged by the plaintiff do not give rise to any legal question for the Court to determine. The Minister is accountable to Parliament and it is there that such questions should be raised.

[4] A declaratory judgment in a discretionary remedy and in the present case, there are no circumstances that would justify the making of the declaration sought.

[Defendant's application allowed with costs.]

Cases referred to:
Tan Sri Othman Saat v. Mohamed bin Ismail [1982] 2 MLJ 177
Dato Menteri Othman bin Baginda v. Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29

Legislation referred to:
Federal Constitution, art. 43(6)
Rules of the High Court 1980, O. 18 r. 19

For the plaintiff - Karpal Singh; M/s. Karpal Singh & Co.
For the defendant - C.V. Das; M/s. Shook Lin & Bok

JUDGMENT

Harun J:

This is an application under O. 18 r. 19 Rules of the High Court 1980 to strike out the writ of summons and statement of claim on the grounds that:

(a) the statement of claim discloses no reasonable cause of action and/or is scandalous, frivolous and vexatious and/or is an abuse of the proceedings of the Court;

(b) that the matters pleaded in the statement of claim are not justiciable;

(c) further or alternatively, the plaintiff has not a sufficient interest or *locus standi* to bring the action herein;

(d) further or alternatively, the plaintiff has an adequate alternative remedy which he has failed to exhaust.

The endorsement on the writ of summons is for a declaration that the defendant has infringed his ministerial oath of office and allegiance made by the defendant pursuant to Article 43(6) of the Federal Constitution. The defendant at the material time was the Minister for Works and Utilities of the Federal Government.

In his statement of claim the plaintiff says the defendant in his private capacity purported to make a purchase of a piece of land from the plaintiff's late father. On 19 October 1981 the defendant issued an official receipt on a letterhead of the Conference of Mentris Besar and Chief Ministers for the said purchase. On 12 January 1982 and 13 January 1982 the defendant issued two separate receipts on the letterheads of the Minister for Works and Utilities Malaysia in respect of the said purchase. And by an undated letter written on the Ministry's letterhead the defendant wrote to a firm of solicitors with regard to the purchase of the land.

The allegation against the defendant is that:

> By the abovesaid conduct, the defendant has failed to faithfully discharge his duties to the best of his ability as a Minister as required by his oath of office.

The first observation that may be made of the statement of claim is that the receipts for the purchase were issued by the defendant who was the purchaser and not in the ordinary course by the vendor. It is more than probable that the vendor was given blank official stationery to write out his receipts.

Locus Standi

Be that as it may, what is the *locus standi* of the plaintiff in this action? It is clear from the statement of claim that he had nothing to do with the sale and purchase of the land. His complaint is that the defendant had abused his official position by permitting the use of official stationery for private purposes. In this respect the plaintiff is a mere member of the public and has no substantial interest or some genuine interest in having his legal position declared. The declaration sought is against the Minister and does not involve any legal right of the plaintiff. It was urged that the plaintiff's *locus standi* is that this is a public interest litigation. The concept of public interest litigation does not apply in this country as we are bound by the Federal Court decision in *Tan Sri Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177 where it was held that a plaintiff seeking relief by way of a declaratory judgment must show that he has special or substantial interest in the subject-matter of the proceedings he has instituted and that his legal interests are particularly affected. On this authority I find that the plaintiff has no *locus standi* and the application should be allowed on this ground alone.

Cause of Action

However, even assuming that the plaintiff has *locus standi*, the cause of action is that the defendant has abused his ministerial powers by permitting the use of Government stationery for private purposes. The statement of claim does not allege that the defendant had infringed any law or committed any illegal act. The averment of abuse of powers in the circumstances described here do not give rise to any legal question for the Court to determine. The Minister is accountable to Parliament and is there that such questions should be raised. I accordingly hold that no reasonable cause of action arises in this case.

Declaration

Finally, a declaratory judgment is a discretionary remedy. In *Dato Menteri Othman bin Baginda v. Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 at p. 31 it was observed:

> The power to grant a declaration should be exercised with a proper sense of responsibility and after a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that properly call for their making.

In the present case I find that there are no circumstances that would justify the making of the declaration as prayed.

For the reasons stated, I would allow the application and order that the writ of summons and statement of claim be struck out with costs.

Also found at [1990] 2 CLJ 282